West Virginia Housing Development Fund

HOME and HTF

Rental Housing Program Guidelines

2018

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1. Summary

The West Virginia Housing Development Fund (the Fund) supports the rehabilitation and new construction of affordable rental housing for low-, very low-, and extremely low-income households with its annual funding allocation from the U. S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program (HOME) and Housing Trust Fund Program (HTF). HOME was created under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 with implementing regulations at 24 CFR Part 92; HTF was established under Title I of the Housing and Economic Recovery Act of 2008.

In general, both HOME and HTF are intended to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention on rental housing. Both programs include income targeting. HOME is focused on very low-income households (at or below 50% AMI) and low-income households (at or below 60% AMI); HTF is primarily focused on extremely low-income households with incomes at or below 30% of the area median income (AMI).

The Fund's HOME and HTF funds will be used to provide financing and gap financing to projects located in West Virginia. The program will target multifamily residential rental housing in eligible areas that is affordable to people who are at or below the specific program's applicable income limits. In exchange for low-cost permanent financing, property owners will agree to income, rent, and other restrictions for an affordability period of at least 15 to 30 years (depending on funding source and level). Projects are monitored for compliance during the affordability period. Project developers, owners, and sponsors must coordinate funder's requirements when there are multiple funding sources.

This document sets forth the requirements for the Fund's awards of HOME and HTF funds for multifamily residential rental projects. In most cases, the requirement for HOME and HTF funds are the same and the Fund's goal is to operate the two programs in a unified fashion, but there are important distinctions between the programs which are identified herein.

2. Application and Evaluation Procedure

The Fund will generally issue a Rental Housing Request for Proposals (RFP) on an annual basis. The RFP will outline specific application deadlines, any funding focus (e.g., by project type, population served, etc.), and other special considerations applied to a given funding round.

A. Funding Availability

Upon submission of a proposal for HOME and/or HTF funds, Fund staff will conduct a review and analysis of the project and developer(s) as presented in the proposal. Proposals will be scored based on criteria in the RFP. Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or commitment of HOME or HTF funds. The Fund will, in all instances, commit HOME and HTF funds consistent with sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

Projects seeking HOME and/or HTF funds prior to the receipt of all other funding sources, including federal tax credit reservations, may be provided with non-binding Letters of Intent. Further, for eligible Rental Housing projects receiving Letters of Intent, said letters may be contingent upon the (1) Approval of the State's Annual Action Plan (including its HTF Allocation Plan); (2) the Fund's receipt of HOME and HTF funds from HUD; (3) the applicant's award from the Fund for LIHTC, if applicable; (4) the Fund's receipt of the HUD Authority to Use Grant Funds following completion of the Environmental Review process (as applicable); and (5) other items noted in the Letter of Intent.

B. Submission of Materials

All HOME/HTF Rental Housing Program applicants must comply with the submission criteria set forth in the Fund's RFP. The Fund reserves the right to require the submission of additional information as needed to complete project underwriting.

3. Project Funding Requirements

A. Eligibility Criteria

Eligible Applicants

Developers and owners of affordable rental housing – including for-profit developers, nonprofit developers, public housing authorities, and Fund-designated community housing development organizations (CHDOs) – are eligible to apply for HOME and HTF funding subject to the program-specific limitations noted below:

HOME

- While public housing authorities are eligible to apply, public housing units supported by Public Housing Capital or Operating funds authorized by the 1937 Act are not eligible for HOME funding. Non-public housing units owned and developed by a public housing authority are eligible.
- CHDOs are a specific type of community-based nonprofit organization defined by section 24 CFR 92.2 of the HOME Finale Rule. The HOME program includes an annual set-aside of funds for projects owned, developed, or sponsored by CHDOs. Prior to committing funds, the Fund will review the status of any organization seeking funds from the CHDO set-aside to ensure that it meets all HOME requirements, that it has sufficient staff capacity to carry out the project, and that the CHDO meets the requirements of "owner," "developer," or "sponsor" as required by 24 CFR 92.300(a).

<u>HTF</u>

- Unlike HOME, HTF can be awarded to assist in the development of public housing units under limited circumstances as outlined in 24 CFR 93.203. This includes:
    - HTF funds may be used for new construction or rehabilitation of public housing as part of the Choice Neighborhoods (Choice) program under a HUD appropriation act or for new public housing units that have been allocated and will receive low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42);
    - HTF funds may be used for the rehabilitation of existing public housing units in which the public housing assistance will be converted and used at the properties under the Rental Assistance Demonstration (RAD) program under HUD's 2012 Appropriations Act (Pub. L. 112-55, 125 Stat. 552, approved November 18, 2011) or subsequent statutes;
    - The public housing units constructed using HTF funds must replace units that were removed from a public housing agency's public housing inventory as part of a Choice program grant, or as part of a mixed-financed development under section 35 of the 1937 Act. The number of replacement units cannot be more than the number of units removed from the public housing agency's inventory. The public housing units constructed or rehabilitated using HTF funds must receive Public Housing Operating Fund assistance (and may receive Public Housing Capital Fund assistance) under section 9 of the 1937 Act. These units cannot receive operating costs assistance or operating cost assistance reserves from HTF.

- Based upon the Fund's underwriting review, Operating Cost Assistance may be available for HTF-assisted units for which project-based assistance is not available.

Project Location

Projects must be located in the State of West Virginia. *Note, beginning in 2017, the Fund allows projects located within local HOME Participating Jurisdictions (PJs) to apply for state HOME funds. Previously, only projects in the "balance of state" had been eligible to apply.*

Project Types

Funds will be provided for acquisition, new construction, and rehabilitation of multifamily residential rental projects. While the Fund will entertain any proposals meeting its criteria, in practice most projects will also require other public investment to be economically feasible. This may include projects also funded with other federally-regulated affordable housing programs such as, but not limited to, LIHTC, HUD Section 202, Section 811, HOPE VI, or Choice Neighborhoods.

Parameters of HOME and HTF Funding

Typically, the Fund will also establish a maximum cap on its investment in a single development. Such a limit will be based on the availability of funding and other Fund priorities and will be addressed in any RFP issued by the Fund. To qualify for HOME/HTF funding, a project must demonstrate the need for an investment of no less than $1,000 in HOME/HTF funding per HOME/HTF-assisted unit.

<u>HOME</u>

- In no case will the Fund investment exceed the maximum HOME investment allowed under 24 CFR 92.250. The maximum per unit subsidy in HOME is published each year by HUD and will generally be provided as part of any RFP.

<u>HTF</u>

- HTF regulations as 24 CFR 93.300 require the Fund to establish a maximum subsidy limit for units assisted with HTF funding as part of the Fund's annual HTF Allocation Plan. In no case will the Fund investment exceed the limits established in the HTF Allocation Plan as approved by HUD.
- If awarded, investment in HTF-funded operating cost assistance or operating deficit reserves is not counted against the maximum per unit subsidy required by 24 CFR 93.300.

B. Eligible Costs

Costs funded with HOME funds must be eligible according to HOME Final Rule 24 CFR 92.206; costs funded with HTF funds must be eligible according to 24 CFR 93.201. The following additional limitations also apply:

i. HOME and HTF funds shall not be used for luxury improvements according to 24 CFR 92.205 and 24 CFR 93.200, respectively.

ii. HOME and HTF funds may not be used to pay operating costs or to capitalize reserves with the following exceptions:

- HOME and HTF may be used, subject to the Fund's approval, to establish a rent-up reserve to cover initial operating deficits allowed under 24 CFR 92.206(d)(5) and 24 CFR 93.201(d)(5; and
- For projects without project based rental assistance, HTF may, subject to the Fund's approval and the requirements of 24 CFR 93.201(e), be used to establish operating cost reserves specifically for anticipated deficits related to the HTF-assisted units in a project.

iii. HOME and HTF funds shall not be used for non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures. HOME and HTF funds may be used for community space or common laundry facilities included in residential buildings.

iv. HOME and HTF funds shall not be used for off-site infrastructure costs, including any costs associated with extending infrastructure to the project site. The cost of connecting to public infrastructure located in an adjacent right-of-way (e.g., water or sewer tap) is an eligible cost.

v. HOME and HTF funds shall not be used for organizational costs such as partnership formation or syndication costs associated with transactions using equity from Low Income Housing Tax Credits (LIHTC), historic tax credits, or other similar tax incentives.

Fund Project-Related Soft Costs

The HOME and HTF programs allow the Fund to include, as project costs, its internal soft costs specifically attributable to a HOME/HTF project, as applicable. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and overseeing the award of funds to the project. In its RFP, the Fund will provide a budget allowance for "Fund Due Diligence & Legal Costs" to be included in the project's total development costs. The project's estimated annual expense information must include a monitoring fee as specified by the Fund in its RFP.

Cost Reasonableness

Per the requirements of 92.250(b) for HOME and 92.300(b) for HTF, all project costs must be reasonable, whether or not paid directly with HOME and HTF funds. The Fund will review all project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs. Fund staff must be allowed the opportunity to conduct a cost analysis to determine cost reasonableness. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

Identity of Interest

Owners must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project.

C. Property Standards

To meet both HOME and HTF regulations and Fund goals, all projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

i. Construction must meet all local codes.

For projects obtaining permits on or after August 1, 2016, the State of West Virginia has adopted and enforces the following codes with amendments:

- 2015 International Building Code

- 2015 International Residential Code
- 2015 International Mechanical Code
- 2009 International Energy Conservation Code
- 2015 International Existing Building Code
- 2015 International Plumbing Code
- 2015 International Fuel Gas Code
- 2015 International Property Maintenance Code
- 2014 National Electric Code
- 2009 ANSI A117.1 American National Standards for Accessibility & Usable Buildings & Facilities

ii. All projects must meet applicable Section 504/UFAS requirements. New construction or substantial rehabilitation projects with five or more total units must provide 5% of the project's units designed to be accessible for tenants with mobility impairments and another 2% of the project's units designed to be accessible to tenants with sensory impairments. Other rehabilitation projects will be required, to the maximum extent feasible, to provide mobility and sensory accessible units in the same percentages. Additionally, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205.

iii. All buildings of five or more residential units in new construction or substantial rehabilitation HOME/HTF projects must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100. In limited circumstances, the Fund may waive this requirement if the project's location makes such installation infeasible or creates an undue financial burden. In practice, this requires the developer to provide the wiring for high-speed internet but does not require the project to provide the internet service itself. The Fund does not anticipate circumstances under which it would waive this requirement.

iv. All projects must have a fully-equipped laundry room if washer/dryer connections are not provided in each unit.

D. Unit Allocation

In general, HOME and HTF units will be "floating units" and evenly distributed among the unit types in the development. If the project's units are not comparable, "fixed units" must be designated. In the case of projects with comparable units, the Fund will designate units as HOME- or HTF-assisted in proportion to the percentage of HOME or HTF investment in the transaction. For example, if HOME represents 10% of the project's total HOME-eligible cost, at least 10% of each unit type will be designated as HOME-assisted units.

HOME-assisted units shall be designated as either "High HOME units" or "Low HOME units." In projects with five or more HOME-assisted units, at least 20% of the HOME-units, rounded up to a whole number, must be designated as Low HOME units. Generally, the Fund will only designate the minimum number of Low-HOME units required unless the applicant requests that additional Low-HOME units be designated to coordinate income and rent restrictions with other project requirements.

E. Income and Rent Restrictions

To qualify as affordable housing, HOME and HTF units must be rented only to households with certain incomes at rents regulated by each program to be affordable to low income households.

Note that HUD releases updated specific income and rent limits annually for both the HOME and HTF programs, which the Fund will provide to owners. The "HUD Income Limits" used for the Section 8 and other HUD multifamily programs are released each year on a different and earlier schedule. Until HUD releases the program-specific income limits, owners must continue to use the current HOME or HTF limits as applicable.

Income Limits

i. High-HOME units must be occupied by tenants with household incomes at or below 60% AMI at initial occupancy, and subsequently to tenants whose income may not exceed 80% of AMI for the county, as adjusted by family size; and

ii. Low-HOME units must be rented exclusively to tenants with household incomes at or below 50% AMI for the county.

iii. HTF-assisted units must be rented exclusively to tenants with household incomes at or below HUD-published limits for extremely low-income families. While calculated by HUD, the limit is 30% AMI for the county in which the project is located or the poverty rate, whichever is higher.[1]

Rent Limits

<u>HOME</u>

i. High-HOME units must be rented at or below the High-HOME rent as published by HUD. In general, HUD calculates the High-HOME rent to be the lesser of the applicable Fair Market Rent or a rent equal to 30% of 65% of the adjusted area median income, adjusted for unit size.

ii. Low-HOME units must be rented at or below the Low-HOME rent as published by HUD. In general, HUD calculates the Low-HOME rent to be the lesser of the applicable Fair Market Rent of a rent equal to 30% of 50% of the area median income, adjusted for unit size. The only

[1] If the HTF is funded nationally with $1B or more in a given year, HTF regulations will allow some units serving very low-income families with incomes at or below 50% AMI. In practice, the near-term likelihood of this funding level is low. The Fund may update its requirement in the future if actual funding conditions warrant.

exception is for those units receiving federal or State project-based rental subsidy, and the very low-income family pays as a contribution toward rent not more than 30% of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or State project-based rental subsidy program.

HTF

i. HTF-assisted units must be rented at or below the HUD-published Housing Trust Fund rent for extremely low-income units. In general, HUD calculates the HTF rent to be 30% of the HTF income limit for the county in which the project is located, adjusted for unit size.

ii. If the HTF unit receives Federal or State project-based rental subsidy, and the tenant pays as a contribution toward rent not more than 30% of the tenant's adjusted income, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

HOME and HTF

The Fund must specifically approve the project's rent schedule annually.

Utility Allowances

The HOME and HTF rent limits are gross rent limits. The actual rent collected from a tenant must be adjusted, taking into account an allowance for tenant paid utilities.

HOME and HTF regulations, 24 CFR 92.252(d) and 24 CFR 93.302(c), respectively, require that the utility allowance (UA) for the project be based on the type of utilities used at the project. The UA is to be established using a project-specific methodology and based on actual utility usage at the property or estimates an allowance based on project-specific factors such as size, orientation, building materials, mechanical systems, and construction quality, as well as local climate conditions.

Public Housing Authority area-wide UAs prepared for the housing choice voucher program are no longer an acceptable method of calculating UAs.

The following methodologies, used in other Federal housing programs, will meet HOME and HTF regulatory requirements and are generally acceptable to the Fund. The Fund's Asset Management department must approve the methodology selected by an applicant. The same methodology must be used for all HOME and HTF units within a single project.

i. **HUD Utility Schedule Model**: The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy and it incorporates energy efficiency and Energy Star data.

This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D). The HUSM and use instructions can be accessed on HUD User at https://www.huduser.gov/portal/resources/utilallowance.html. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model on HUD User at https://www.huduser.gov/portal/datasets/husm/uam.html.

ii. **Multifamily Housing Utility Analysis**: In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). This method is applicable for the following programs: Project-based Section 8, Section 101, Section 202/162, Section 811, Section 236, and Section 221(d)(3).

iii. **Energy Consumption Model (Engineer Model)** (26 CFR 1.42-10(b)(4)(E)) –UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

The Fund must approve the project's utility allowance annually.

Income Verification

All projects shall use the HUD Part 5 definition of income for determining income eligibility. Prior to signing a lease, income must be verified for all new tenants using at least two months of source documentation (e.g. pay stubs, account statements, etc.) in accordance with 24 CFR 92.203(a)(1)(i) for HOME and 24 CFR 93.151(d) for HTF. Third party verification can only be used in situations where source documentation is not available such as a tenant starting a new job.

During the period of affordability, the income of in-place tenants must be recertified using source documentation at least every sixth year of the project's affordability period (e.g., in the sixth year, all in-place tenants must be recertified using source documentation even if a given tenant is only in his/her second year of occupancy). In other years, owners must recertify the income of existing tenants annually but may use one of the options in 24 CFR 92.203 and 24 CFR 93.151, as applicable, unless the Fund requires that a project use one of the methods exclusively:

i. Re-verifying income annually through source documentation;

ii. Obtaining a written certification from the household regarding annual household income along with a statement that the tenant will provide source documentation upon request. Regardless, source documentation for all in-place tenants must be reviewed at least every 6th year of the affordability period; or

iii. Obtaining a written statement from the administrator of a government program under which the households receive benefits and which examines each year the annual income of the household.

Rent Adjustments

HUD provides HOME and HTF income and rent limits on an annual basis. Fund staff will provide this information to owners annually. Utility allowances will also be reviewed and adjusted, as needed, annually. Owners must obtain approval before implementing HOME and HTF unit rent increases. Owners shall also provide not less than 30 days' written notice to tenants upon receiving Fund approval for HOME and HTF unit rent increases.

HOME

HOME-assisted units are considered to be compliant despite a temporary increase in income exceeding HOME requirements for existing tenants. However, in such cases there are detailed requirements about how to adjust the rent of such tenants and how to restore overall project compliance. These are outlined in the HOME Model Guide "Compliance in HOME Rental Projects: A Guide for Property Owners," which is available online at:

http://portal.hud.gov/hudportal/documents/hudoc?id=19760_2009homerentalpo.pdf

For projects with floating units, when an existing tenant's income increases beyond 80% AMI adjusted for household size, the tenant's gross rent will be increased to the lesser of the unassisted market rent for the unit or 30% of the tenant's adjusted household income. The next comparable (or larger) unassisted unit must then be rented to a tenant eligible to occupy a High-HOME unit. When the income of an existing tenant of a Low-HOME unit increases above 50% AMI but is below 80% AMI, the next available High-HOME unit must be rented to a tenant at or below 50% AMI at the Low-HOME rent. Following the replacement of the Low-HOME unit, rent for the tenant will be increased to the High-HOME rent.

Notwithstanding, over-income tenants of HOME-assisted units that have been allocated low-income housing tax credits must pay rent according to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

HTF

In the event a tenant occupying an HTF unit becomes over-income, the HTF-assisted unit continues to qualify as affordable housing despite a temporary noncompliance caused by increases in the existing tenant's income if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with 24 CFR 93.302 until the noncompliance is corrected.

Note, HUD has not yet issued specific guidance about the what specific actions will be required with respect to adjustments in the rent level for tenants who are over-income at recertification.

Once such guidance is issued, the Fund will require that all HTF-assisted projects comply, even if originally funded prior to the issuance of detailed HUD guidance.

F. Environmental Review Requirements

Federally-assisted projects are subject to a variety of environmental requirements. Developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with Fund staff prior to entering into a purchase agreement or submitting an application.

<u>HOME</u>

i. All HOME-assisted projects shall be implemented in accordance with environmental review regulations as defined in 24 CFR Part 58.

ii. The Fund shall be responsible for conducting the environmental review and completing all necessary public notifications, and the request for release of funds (RROF), as applicable, from HUD. The applicant is responsible for cooperating with the Fund in the environmental review process and providing information necessary for the Fund to fulfill its responsibilities under Part 58 and other applicable regulations.

iii. Submitting an application for HOME funds triggers environmental review requirements under 24 CFR Part 58, including the National Environmental Policy Act (NEPA). Once an application for federal funds is submitted, a project proposal is now subject to the environmental review requirements and requires an environmental clearance and issuance of a Release of Funds (ROF), as applicable, by the U. S. Department of Housing and Urban Development.

iv. Developers are <u>prohibited</u> from undertaking or committing or expending any funds (including non-federal funds) to any physical or choice-limiting actions on the site prior to an environmental clearance as required by Part 58. Physical and choice-limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used, and taking a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any HOME funds from the Fund.

<u>HTF</u>

HTF funding is not specifically subject to NEPA or to HUD's environmental review regulations at 24 CFR 58. However, the HTF regulations at 24 CFR 93.301 impose substantially equal provisions to the detailed requirements under NEPA and 24 CFR Part 58. The difference between the two regulatory approaches is largely administrative. HTF funds are not subject to publication requirements, nor is the Fund required to seek a formal release of funds from HUD prior to committing funds to a project. Notwithstanding the technical differences in the regulatory requirements, in practice the Fund does not intend to enter into project-specific funding commitments until it has satisfactory evidence that all appropriate requirements have been met.

Applicants are strongly encouraged to review the requirements in 24 CFR 93.301 and HUD CPD Notice 16-14: Requirements for Housing Trust Fund Environmental Provisions.

G. Other Federal Requirements

Nondiscrimination and Equal Opportunity

The following federal nondiscrimination and equal opportunity guidelines apply to all Rental Housing projects and affect both development and operation of assisted housing:

i. The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.;

ii. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;

iii. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;

iv. The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146;

v. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title;

vi. Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135;

vii. Executive Order 11246, as amended by Executive Orders 11375, [[Page 41]] 11478, 12086, and 12107 (3 CFR,1964-1965 Comp., p. 339; 3 CFR, 1966- 1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;

viii. Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971- 1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development);

ix. Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). The nondiscrimination provisions of Section 282 of the National Affordable Housing Act of 1982; and

x. The Equal Access Rule, 24 CFR 5.105(a)(2), requiring that assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

Uniform Relocation Act (URA)

All Rental Housing projects fall under requirements of the URA. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain. To ensure compliance with URA, applicants should consult the Tenant Relocation portion of the RFP application to understand the requirements of URA prior to submitting an application involving an occupied property.

Labor Standards

HOME

Labor standards, including Davis-Bacon federal prevailing wage requirements shall apply to all Rental Housing projects with 12 or more units assisted with HOME funds. See www.wvhdf.com for Davis-Bacon forms.

HTF

HTF funding does not trigger federal labor standards.

Minority Business Enterprise and Women Business Enterprise (MBE/WBE) Plan

Developers must maintain a MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors for the construction of the project. See www.wvhdf.com for the MBE/WBE Report.

Section 3

Developers must maintain a Section 3 plan that demonstrates a marketing plan to include Section 3 contractors and all tiers of subcontractors in the construction of the project. See www.wvhdf.com for Section 3 forms.

Excluded Parties

The Fund will not fund projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards. Furthermore, the owner may not contract with any other entity (including but

not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.
The System for Award Management (SAM) database should be used by applicants to confirm that development team members are not excluded. The SAM database is available at https://www.sam.gov/portal/SAM/#1.

4. Ongoing Project Requirements

A. Project Completion Deadline and Period of Affordability

HOME

The period of affordability will be based on the date of project completion as defined by 24 CFR 92.2 which, among other things, requires that all construction activity be complete, all HOME funds drawn from the U.S. Treasury, and project completion information be entered into HUD's IDIS reporting system. For rental projects, project completion occurs upon completion of construction and before occupancy, and units may be marked vacant in IDIS until complete beneficiary data is received. The Fund requires that all HOME-assisted units must be initially leased within twelve (12) months of construction completion, which is noted on the final approved inspection by Fund Technical Services Department. The Owner's failure to meet this twelve (12) month deadline will constitute an event of default pursuant to the HOME Written Agreement. In accordance with the minimum requirements of 24 CFR 92.252(e), rehabilitated and new construction rental projects funded with HOME shall maintain HOME affordability requirements for a period of up to 15 years for rehabilitation projects and at least 20 years for new construction projects.

HTF

The period of affordability will be based on the date of project completion as defined by 24 CFR 93.2, which, among other things, requires that all construction activity be complete, all HTF funds drawn from the U.S. Treasury, and project completion information be entered into HUD's IDIS reporting system. For rental projects, project completion occurs upon completion of construction and before occupancy, and units may be marked vacant in IDIS until complete beneficiary data is received. The Fund requires that all HTF-assisted units must be initially leased within twelve (12) months of construction completion, which is noted on the final approved inspection by Fund Technical Services Department. The Owner's failure to meet this twelve (12) month deadline will constitute an event of default pursuant to the HTF Written Agreement. In accordance with the minimum requirements of 24 CFR 93.302(d), rehabilitated and new construction rental projects funded with HTF shall maintain HTF affordability requirements for a period of 30 years as regulated by 24 CFR 93.302.

B. Initial Occupancy Deadlines

HOME

In accordance with 24 CFR 92.252, HOME-funded rental projects must comply with the following deadlines and requirements as evidenced by occupancy of tenants with a written lease that complies with the requirements of 24 CFR 92.253:

i. Within 6 months from the date of project completion, if a rental unit remains unoccupied, the Owner will provide to the Fund information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.

ii. Within 18 months from the date of project completion, if efforts to market the units are unsuccessful and units remain unoccupied by an eligible tenant, the Fund will require repayment of all HOME funds invested in each vacant unit. A unit that has not served a low- or very low-income household, as applicable, has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

Note, the Fund's procedures hold back HOME funds until lease-up of units is achieved and properly reported to the Fund. In practice, this means that "project completion" as defined by HUD will only occur following lease-up. The provisions above, however, will apply if the Fund ever approves the final draw for a project following construction completion but prior to lease-up.

HTF

HUD does not currently impose specific lease-up deadlines on HTF-funded projects, but the Fund will generally require that projects which are not complete within the HOME timelines noted above repay HTF funds.

C. Marketing and Leasing

The owner/developer must establish a written tenant selection plan consistent with the requirements of 24 CFR 92.253(d) for HOME and 24 CFR 93.303 for HTF. Among other requirements, the tenant selection plan must, insofar as is practical, provide for the selection of tenants from a project's waiting list in chronological order of their applications and provide written notification to any rejected applicant of the reason for their rejection.

All HOME- and HTF-funded projects must establish an Affirmative Fair Housing Marketing Plan detailing marketing procedures to attract eligible occupants without regard to race, color, national origin, sex, religion, familial status, disability, or sexual orientation. Affirmative Fair Housing Marketing Plans shall include all required aspects as stated in 24 CFR 92.351(a)(2) for HOME and 24 CFR 93.350 for HTF. The Fund will accept affirmative marketing plans using the most recent version of form HUD-935.2A or HUD -935.2B, as applicable, or in another format as may be specified by the Fund from time to time. The HUD forms are available at:

https://www.hud.gov/sites/documents/935-2A.PDF
https://www.hud.gov/sites/documents/935-2B.PDF

Leases between the tenant and owner shall be for one year, unless by mutual agreement between the tenant and the owner. Owners are required to provide 30 days' written notice prior to terminating or refusing to renew the lease. Owners are prohibited from including unfair provisions in HOME project leases. In accordance with the provisions of 24 CFR 92.253 for HOME and 24 CFR 93.303 for HTF, the following terms are prohibited from HOME and HTF project leases:

i. agreement to be sued;

ii. treatment of personal property;

iii. excusing owner from responsibility;

iv. waiver of notice;

v. waiver of legal proceedings;

vi. waiver of a jury trial;

vii. waiver of right to appeal court decision;

viii. tenant chargeable with cost of legal actions regardless of outcome; and

ix. mandatory participation in supportive services (note, transitional housing projects funded with HOME may be permitted to require service participation under limited circumstances; contact Fund staff for more detail).

Finally, projects must comply with the requirements of the Violence Against Women's Act (VAWA) as required by 24 CFR 92.359 for HOME and 24 CFR 93.356 for HTF. VAWA provides certain additional tenant protections to applicants and tenants who are victims of domestic violence, sexual assault, and/or stalking. In general, among other requirements owners must provide notices to all tenants of the VAWA provisions, may not deny an application or terminate or refuse to renew a lease as a result of a person's status as a victim or on the basis of criminal activity related to such status, and must allow for the bifurcation of a lease in order to evict the perpetrator of such criminal activity while allowing the victim to maintain occupancy.

In general, the Fund will provide a standard form lease-addendum for use by owners of HOME- and HTF-assisted housing that will provide required tenant protections and eliminate any prohibited provisions from uses otherwise used by owners.

D. Prohibition on Certain Fees to Tenants

Pursuant to 24 CFR 92.214 for HOME and 24 CFR 93.204 for HTF, program participants may not charge fees to program beneficiaries to cover administrative costs related to the cost of administering the HOME and HTF programs. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owners may charge fees approved by the Fund for the following:

i. Reasonable application fees to prospective tenants;

ii. Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by the Fund to be customary for rental housing projects in the area and not excessive;

iii. Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and

iv. Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, as long as the services are voluntary and fees are charged only for services provided.

The Fund will review and approve fee schedules annually to ensure that any fees charged in addition to rent are permissible under the applicable HOME and HTF requirements and whether proposed fees are reasonable and customary based on market comparisons.

E. Reporting and Recordkeeping

To allow effective oversight of funded projects and document compliance with applicable HOME and HTF requirements, all projects must submit periodic reports to the Fund. While this section outlines standard reporting requirements, the Fund reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME and HTF requirements or Fund policy. Additionally, the Fund reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

i. Owners are required to report quarterly during the development phase and lease-up phase. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g., by April 15th reports on the first quarter are due).

- During the construction phase, owners must provide monthly reports detailing construction progress and barriers to progress, copies of invoices being paid, and evidence of appropriate lien waivers.

- During the initial phase of lease-up, the Fund may request owners to provide monthly or quarterly reports detailing the number of additional leases, total project leases, marketing activity, and monthly income and expenses. Once the owner has leased 100% of units, leasing and marketing reporting will be required annually.

ii. Annual Reports shall be required for all HOME and HTF projects, and shall include an Annual Occupancy Report, utility allowance documentation, and examples of marketing materials.

iii. The Fund may require more frequent reporting due to findings identified during annual monitoring or findings identified during quarterly reports submitted during the development and lease-up phases.

iv. All HOME and HTF projects shall be required to submit annual budgets to the Fund for review and approval. Additionally, all projects will be required to submit an audit prepared by an independent Certified Public Accountant within 180 days of the end of its fiscal year. For small projects where the cost of a project-specific audit is deemed by the Fund to be burdensome, the Fund may accept a statement of financial condition with prior approval by the director of Asset Management.

v. Owners and developers shall allow the Fund, HUD, State of West Virginia, the Comptroller General of the United States (aka the GAO), and all other pertinent federal or State agencies or their designated representative the right to inspect records and property.

vi. Owners must annually submit any updates to their Tenant Selection Policy and Affirmative Fair Housing marketing plan and must maintain records of annual efforts to affirmatively further fair housing in accordance with 24 CFR 92.351 for HOME and 24 CFR 93.350 for HTF. Updates must clearly detail all changes.

vii. Owners must annually report to the Fund on compliance with the provisions of the Violence Against Women Act (VAWA) as applied through 24 CFR 92.359 (HOME) and 24 CFR 93.356 (HTF) including records related to any emergency transfer requests and their disposition.

vii. The Fund may periodically require owners to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the Fund. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the Affordability Period, the owner must, at the Fund's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If an additional deposit is required by the Fund, the owner (or the Guarantors) must replenish the Replacement Reserve Account within six months.

F. Conflict of Interest

To comply with HOME and HTF requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided.

i. Owners shall maintain compliance with all HUD conflict of interest provisions as stated in 92.356 for HOME and 93.353 for HTF.

ii. Developers and owners with employees, family members, consultants, or agents that are otherwise eligible to occupy HOME- and HTF-funded units must receive approval from the Fund before entering into a lease with HOME and HTF eligible employees, family members, consultants, or agents. 92.356(f) provisions apply to all HOME projects; 93.353(f) provisions apply to all HTF projects.

5. Structure of Transaction

A. Loan Types and Terms

The Fund will provide HOME and HTF funds in the form of a loan to the entity that owns the property. No grants will be awarded, and funding commitments are not transferable without prior written Fund approval.

The Fund's HOME or HTF Loan is intended as construction/permanent financing. Proceeds of the HOME or HTF loan will only be released in conjunction with approved monthly construction draws and/or submission of invoices for approved soft costs and satisfaction of all requirements outlined below.

Generally, the Fund's underwriting for the HOME or HTF loan will:

i. Have a term of 15 to 30 years based on the affordability period for the project;

ii. Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity, whichever occurs first; and

iii. Secured with a deed of trust, promissory note, and appropriate UCC liens. The Deed of Trust will be recorded in the appropriate county and generally may be subordinate only to an amortizing permanent first mortgage and a temporary bank construction loan, all of which must be approved by the Fund, if applicable.

Generally, the Fund will offer the following potential repayment structures:

i. For projects without senior amortizing loans (e.g., a conventional mortgage or USDA financing), HOME/HTF will be structured as an amortizing loan with a term equal to the affordability period. Based upon the Fund's underwriting evaluation, payments may be based on a longer amortization period with a balloon due at maturity if a project cannot be expected to fully amortize the loan; or

ii. For projects with senior amortizing loans, HOME/HTF will be structured as fully amortizing, partially amortizing, and/or a cash flow contingent loan typically payable from 50% of cash flow. If a project cannot be expected to fully amortize the loan, terms may include a balloon payment at maturity.

B. Reserves and Cash Flow Distributions

To preserve the ongoing viability of projects, the Fund will require the establishment and maintenance of various reserves. In general, reserves will be held by the Fund and must remain in place so long as the project's HOME/HTF loan is outstanding or for the duration of the affordability period, whichever is longer. Reserves will include:

i. An operating reserve intended to protect against unexpected operating deficits;

ii. For projects where the Fund's underwriting anticipates operating deficits during the affordability period, an additional operating deficit reserve must be capitalized.

iii. A replacement reserve intended to fund future capital and rehabilitation needs. Initial reserve deposit requirements are noted in the underwriting standards below, and the Fund may modify reserve requirements during the affordability period based on periodic capital needs assessments.

iv. At the Fund's option, a preservation reserve account may be created and funded with annual deposits equal to 50% of surplus cash (i.e. cash flow). The preservation reserve is intended, particularly for HTF-assisted projects, to assist in the future preservation, refinancing, or repayment of the HTF transaction.

v. As may be required based on specific or unique project features, additional specialty reserves may be required, such as for tenant services, abnormal security costs, etc.

If applicable, the Fund must also approve any distributions of surplus cash, which among other items, will require that all reserves be fully funded, the project be in compliance with all federal requirements, the project not be in default, and that the project retain sufficient liquidity following the distribution.

C. Guarantees

Unless otherwise determined by the Fund, not including investor/syndicator partners or members of the ownership entity, all underlying individuals, corporate entities, partnerships, or limited liability companies with an interest in the project's ownership entity will be required to provide the following guarantees:

i. Continuing Guarantee including provisions guaranteeing construction completion of the project.

ii. Performance and Repayment Guarantee including provisions guaranteeing environmental compliance and compliance with HUD HOME/HTF guidelines.

iii. Replacement Reserve Guarantee to ensure annual deposits to a Replacement Reserve for the project in an amount consistent with the loan documents and/or covenant running with the land.

Guarantees shall be joint and several and must remain in effect throughout the affordability period.

D. Declaration of Land Use and Restrictive Covenants

Each HOME- and HTF-funded project must maintain Land Use and Restrictive Covenants enforcing HOME, HTF, and Fund guidelines, as applicable. The Land Use and Restrictive Covenants will be separately recorded and will remain in place for the Affordability Period even if the HOME/HTF loan is prepaid. The following guidelines must be enforced through Land Use and Restrictive Covenants:

i. Owner will be owner in fee simple of the property;

ii. Property is not subject to additional liens or encumbrances that the Fund has not agreed to;

iii. The Fund must approve any transfer of the property, and such approval will be in the Fund's sole discretion;

iv. Provisions to enforce ongoing requirements for project compliance through the HOME/HTF Affordability period, including:

- The length of the period of affordability;
- Income and rent restrictions on HOME- and HTF-assisted units;
- Property standards to be enforced;
- Marketing and leasing requirements; and
- Recordkeeping and reporting requirements.

While the Fund's HOME/HTF loan will generally be subordinate to conventional debt, the HOME/HTF covenant must be recorded senior to all liens and encumbrances associated with the project financing, including any loans senior to the Fund's HOME/HTF loan, and structured to survive any foreclosure by a senior lien.

If a project receives both HOME and HTF funding, separate covenants will be recorded. The HOME and HTF covenants will be separate from any LIHTC covenant.

E. Written Agreement

In addition to any financing documents, owners of HOME- or HTF-financed projects must sign a HOME or HTF Written Agreement with the Fund. The Written Agreement will identify requirements for compliance with the HOME or HTF regulations, and the Fund's Rental Housing Program requirements and will remain in effect in the event of any prepayment of the HOME or HTF loan. In the event a project is receiving both HOME and HTF funding, separate written agreements are required for each funding source.

6. Underwriting & Subsidy Layering Reviews

See HOME and HTF Underwriting and Subsidy Layering Guidelines at www.wvhdf.com for more information.

A. Project Underwriting

All HOME and HTF project applications with up to four (4) total units must include a developer-prepared market assessment documenting the demand for additional affordable rental housing in the location proposed, the supply of affordable rental housing, and other pertinent information such as the location of employment opportunities, schools, and waiting list data. In addition, the developer must explain the marketing plan and indicate who will be responsible for marketing and leasing the units. Market assessment documents must be less than three (3) months old at time of submission.

All HOME and HTF project applications with five (5) or more total units must include a professionally-prepared market study, and applicants may submit the market study used in conjunction with the applicant's LIHTC application, if applicable. Market studies must be less than three (3) months old at time of submission. Proposed rent levels must be supported by the applicant's market study and within HOME and HTF regulatory limits, as applicable.

All HOME and HTF applications must include personal financial statements (audited if available) and the three most recent tax returns from all underlying developers, owners, and guarantors and will be subject to the Fund's evaluation of fiscal soundness as required by 24 CFR 92.250(b)(2) (HOME) and 24 CFR 93.300(b)(2) (HTF).

Generally, project underwriting will also include:

i. Vacancy factor of at least 5% for projects where all units are supported by a project-based rental assistance contract with a term equal to or in excess of the affordability period (e.g., project-based Section 8), and at least 7% for all other projects, unless the market study indicates another vacancy factor is needed.

ii. Fund staff will use a maximum 2% inflation factor for all sources of income.

iii. All operating expenses will be underwritten with an inflation factor of at least 3%.

iv. All HOME and HTF projects must maintain an acceptable Debt Coverage Ratio (DCR) for the affordability period. Properties with excessive DCRs may have rent increases reduced or denied.

v. Proposals must include justification of operating costs that includes a comparison to similar projects in the local market. Whenever possible, comparable properties should be operated by the proposed management company.

vi. Unless otherwise approved by the Fund, the operating budget must include a minimum deposit of $350 per unit per year, and Replacement Reserve must be funded and maintained for the full affordability period and reflected in the operating expenses for the full 15- to-30-year projection of expenses, as applicable. Replacement Reserve deposits will be inflated at 3% annually.

vii. If required by the Fund, projects must include a capitalized operating reserve equal to (6) months of underwritten operating expenses, amortizing debt service, and required reserve deposits. If drawn, the operating reserve must be replenished prior to distributions of cash flow. The operating reserve is intended to protect against unplanned operating deficits. If the Fund's underwriting projections anticipate deficits within the applicable affordability period, an operating deficit reserve must be capitalized as well.

viii. To substantiate equity pricing, if applicable, applicants must submit documentation indicating that a syndicator or investor has reviewed the proposal and indicated preliminary pricing along with their interest in the project.

ix. Applicant must provide the amounts and terms for the construction financing, permanent financing, and if applicable, owner equity information. Amortizing permanent financing that will be senior to the Fund's HOME/HTF loan may not mature prior to the expiration of the HOME/HTF affordability period.

B. Proforma Requirements

The Fund requires submission of a project proforma in a format provided by the Fund.

If not otherwise itemized, applicants must be able to separate the hard costs of any stand-alone accessory buildings, including leasing offices, community buildings, laundry facilities, free-standing garages or carports, or maintenance buildings; they should be specifically itemized in the Development Sources and Uses so that the Fund can complete preliminary HOME and HTF cost allocation calculations.

Costs and fees are to be paid to the Fund as permitted by the HOME and HTF programs. The HOME and HTF programs allow the Fund to include, as project costs, its internal soft costs specifically attributable to the project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and monitoring award of funds to a project. Applicants must include allowances for the Fund's project-related soft costs, the amount for which will be published in the annual RFP.

Similarly, applicants must include, as part of the operating budget, an allowance for the Fund's ongoing monitoring fees as specified in the annual RFP.

C. Cost Limitations

All project costs must be reasonable and necessary whether directly paid with HOME/HTF funding or another source. The Fund reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME and HTF projects will be subject to the following specific cost limitations:

i. The developer fee is calculated based upon project type (with or without LIHTC), activity (acquisition, rehabilitation, and/or new construction), and presence of identity of interest. The developer fee schedule is included in the HOME and HTF Underwriting and Subsidy Layering Guidelines (located at www.wvhdf.com).

ii. Maximum allowable builder General Requirements, Overhead, and Profit are 6%/2%/6%, respectively. The builder line item percentages are calculated on the construction contract price which cannot include construction contingency. If the Fund's Inspector approves a Change Order for use of construction contingency, the same percentages for builder line items apply.

iii. The acquisition line item on the project budget may only reflect the lesser of the actual acquisition purchase price or the current as-is market value as supported by an independent third-party appraisal, prepared by a state-licensed appraiser.

D. Other Public Funding Sources

Owners must disclose all other firm commitments for funding with the initial HOME/HTF Rental Housing application to the Fund at the time of application and upon receiving any additional commitments of funding. The Fund will conduct a subsidy layering review as part of the underwriting process for any project that includes other sources. Using its underwriting criteria, the Fund will assess the project and may require changes to the transaction to ensure that cash flows to the owner/developer are not excessive. Changes may include a reduction in HOME/HTF funds awarded, reductions in the rents being charged to tenants, requirements that excess (surplus) cash is deposited to a reserve account, or increases in annual payments on the HOME/HTF loan.

The Fund will consider adjusting its underwriting in consultation with other funders, if applicable, to the project. The Fund retains, at its sole discretion, the power to decide whether to accept alternative standards.

E. Lender Title Insurance

Lender title insurance is required for projects that have received a commitment of HOME/HTF funding.

7. Construction Process

A. Fund Construction Inspections

The Fund will provide HOME/HTF funds in the form of construction and/or permanent financing only. The Fund must be provided with the G-702/703 and supporting documentation and Developer/Owner must provide reasonable notice of any changes to scheduled monthly draw inspections during the construction period. Fund staff will participate in all draw reviews and conduct inspections to ensure that the project is progressing, and that work completed is consistent with all applicable HOME/HTF requirements.

B. Davis-Bacon

<u>HOME</u>

When Davis-Bacon applies to a project, the Fund must be provided with compliance documentation throughout the construction period even when HOME is provided as a permanent loan following the completion of construction. Prior to commencing construction, the Fund must approve current wage determinations applicable to the project. The contractor will be required to provide weekly payroll forms to the Fund and allow access to the site and workers for the purpose of completing worker interviews.

The Fund will accept Form WH-347 or acceptable internal forms from the contractor. Form WH-347 and instructions for completing it may be accessed at https://www.dol.gov/whd/forms/wh347instr.htm.

HTF

Davis-Bacon does not apply to HTF projects unless triggered by another source in the project.

C. Drawing Funds

The Fund's HOME/HTF Loan is intended as construction and/or permanent financing. Proceeds of the HOME/HTF loan will only be released as reimbursement for eligible project costs.

A. Conditions of Construction Draws: Proceeds of the HOME/HTF loan will only be released to Owner for actually-incurred HOME- and/or HTF-eligible project costs. The obligation of the Fund to approve any draw or to make any disbursement of HOME/HTF funds is subject to the satisfaction of the following conditions at the time of making such disbursement.

i. Draws will not be processed if the Owner is in default.

ii. The Project shall not have been materially damaged by fire or other casualty.

iii. The Fund shall have received evidence satisfactory to the Fund that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.

iv. Owner shall have submitted at least five (5) days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by the Fund including, without limitation, the following:

a. Current Contractor Tracking Form and lien waivers, which are to be dated no less than five (5) days precedent to the date of the requested disbursement.
b. Evidence satisfactory to the Fund that the Project and the contemplated use thereof are permitted by and comply with all applicable uses or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction; that the required building permits and other permits have been obtained as required; and that no environmental

impact statement is required or that such environmental impact statement has been properly filed and approved.

c. Appropriate certifications of compliance in all respects with labor standards and prevailing wage requirements applicable under federal law.
d. Such other supporting evidence as may be requested by the Fund or its agents to substantiate all payments which are to be made out of the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
e. The Fund shall have determined that all HOME/HTF requirements pertaining to the disbursement of funds have been met, including, but not limited to, the monitoring of Davis Bacon compliance, as applicable.
f. The Fund shall have received a current inspection report from a Fund inspector that verifies satisfactory completion of work to HOME/HTF standards.
g. The Fund shall have received a current/updated title endorsement.
h. No determination shall have been made by the Fund that the undisbursed amount of the loan is less than the amount received to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

B. Conditions of Final Disbursement: In addition to the requirements set forth in Section A, the Fund shall require the following prior to the final disbursement of funds, the request for which shall not be submitted before completion of the Project, including all landscape requirements and offsite utilities and streets and correction of defects in workmanship and/or materials.

i. A certificate of occupancy, if applicable, and a final approved construction report from the Fund's Technical Services Department for the Project.

ii. Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations (e.g., unit number or lettering such as #12 or Apartment B-3) for all HOME/HTF units.

iii. Evidence satisfactory to the Fund that the Project has been completed lien free and substantially in accordance with the plans and specifications.

iv. Review and final settlement of the cost certification.

v. Such other supporting evidence as may be requested by the Fund or its agent to substantiate all payments which are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the Project.

vi. Lease-up of all HOME-/HTF-designated units, submission of tenant data necessary to complete the Project in HUD's IDIS system, and the Fund's approval of income determinations for HOME-/HTF-assisted tenants.

vii. A determination by the Fund that all HOME/HTF requirements pertaining to the initial development of the Project have been met, including but not limited to, the monitoring of Davis-Bacon compliance, as applicable.

C. Limitation on Draw Requests

i. In all cases, Owner may not request disbursement of HOME and/or HTF funds until funds are needed for the payment of eligible costs, and all disbursement requests must be limited to the amount needed at the time of the request.

ii. No disbursements for materials stored will be made by the Fund unless Owner shall advise the Fund of its intention to so store materials prior to their delivery. The propriety of disbursements for materials stored shall be determined in the Fund's sole discretion.

iii. If all or a portion of the developer's fee is not budgeted to be paid with HOME/HTF funds, 10% of total HOME/HTF funds will be held as retainage until submission and approval of all items in Section B above.

D. Project Closeout

Owners are required to submit demographic data at lease up for all HOME-/HTF-funded units. Data shall include elderly status, race, gender, female head of household, number of household members, and percent of area median income. In addition, prior approval is required of all Leases and Tenant Income Certifications for all HOME-/HTF-assisted units. Owners must be aware that the affordability period does not begin for HOME-/HTF- funded units until all project costs are processed, all demographic data is verified by Fund staff, and the project is entered as completed in the HUD Integrated Disbursement and Information System (IDIS).

8. Long-Term Monitoring

Following project closeout, the Fund will monitor the project for ongoing compliance with HOME/HTF requirements, including, but not limited to, income and rent restrictions, property standards, tenant protections, and marketing and fair housing requirements. In addition to requiring periodic reporting as outlined in Section 4.E. above, the Fund will conduct on-site monitoring visits as required by HOME regulations at 24 CFR 92.504(d)(1) and HTF regulations at 24 CFR 93.404. The purpose of these visits will include, at minimum, reviews of project records and inspection of the premises including common areas and residential units.

In most cases, the Fund conducts such reviews annually. However, the Fund reserves the right to conduct site visits more or less frequently based on changes to HOME and HTF regulations, Fund policy, or based on evidence of compliance deficiencies in a prior monitoring visit.